

The “Savona Affaire”: Overconstitutionalization in Action?

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As is well known, Italy is undergoing an institutional crisis sparked by President Mattarella's veto on the composition of the prospective Italian government. The apparent cause of the crisis is the choice of Paolo Savona as Minister of the Economy. From a constitutional perspective, several considerations may be made. Diletta Tega and Michele Massa have already published a balanced and [informative entry](#) in this blog. We find their legal arguments persuasive, although we lean to the view that there is a disproportion between the proclaimed ends and the chosen means. It would have been more fitting, as has been argued, that the Head of State would have accepted the new government while exerting an special vigilance over the potential conflicts between the policies being implemented and the Italian Constitution, along the lines of Article 74 of the Italian Constitution (for a more elaborate version of the argument, see [here](#)). In this entry, we approach the issue from yet another perspective. Our goal is to set the “Savona affaire” in its broader EU context. In many ways, this episode is revealing of the democratic limits of the European constitutional architecture and institutional culture. Following [Dieter Grimm](#), we claim that the events here analysed reveal the extent to which the EU legal framework is overconstitutionalised and the democratic costs and risks inherent in this legal and political order.

Can an economist critical of the current governance of the Euro be appointed as Minister of Finance of a Eurozone country? Simply put, this is the issue at stake in the “Savona affaire”. It is by now well known that Paolo Savona, an experienced economist and policy-maker who was already a member of the pro-European Ciampi government back in the 1990s, has recently grown into an outspoken critic of the current state of the Eurozone. Notably, in a series of articles and public speeches, Savona has claimed that the Union should complete the Eurozone with all the instruments required to manage a non-optimal currency area (see for example, [here](#)). Yet, having realized that a majority of European governments are likely to oppose a similar reform agenda, he also warned against the economic and social risks inherent in remaining for indefinite time in the current “no man's land” in which the euro remains a currency without a state. Thus, he aired the idea that Italy should at any rate devise a “plan B” aimed at exiting the Eurozone were his EU partners to maintain their opposition. (In another [contribution](#), he suggested instead that Germany and Northern Europe countries should leave the Euro).

It seems to us this is not the profile of a dangerous politician aiming destroying the existing institutional structures and decision-making processes, but rather one of a federalist without illusions. Clearly, Mattarella harboured a different view, and that explains how he reacted. Still, the boldness of Mattarella's intervention is surprising given not only his profile both as life-time moderate politician and constitutional judge, but also as a rather self-contained President. Hitherto, he had acted on the basis of a self-understanding of his role rather different from the interventionist style of Giorgio Napolitano, not infrequently regarded as having given the Presidency an imprint closer to the head of states with a direct popular

mandate.

Why Mattarella rejected Savona

In rejecting Savona, Mattarella issued a declaration the examination of which may be very instructive in the assessment of the constraints imposed by EU membership on the operation of national constitutional democracies.

Firstly, Mattarella claims that an Italian Minister of the Economy cannot be the “supporter of a [political] line, repeatedly manifested, that could provoke, even inevitably, the Italian’s exit from the Euro”. In shorter and perhaps clearer terms, Ministers of the Economy have to be a safe pair of hands, and those who dare to express doubts concerning the irreversibility of the euro are by definition not a safe pair of hands. The fact that Savona had been a minister in no other than the Ciampi government is besides the point. His very public entertainment of doubts regarding the pertinence of drawing exit plans from the Eurozone to strengthen the negotiating hand of Italian officials disqualifies him, given that the very act of his appointment could increase the cost of borrowing for the Italian Treasury (the infamous spread), thus compromising — and we quote literally — the savings of Italians: “The losses on the stock exchange, day after day, burn resources and savings of our companies and those who have invested. And they constitute real risks for the savings of our fellow citizens and for Italian families”. Thus, it seems to have been the case that what triggered a rather unprecedented decision in its consequences, was not the identity or the record of the Minister of Finances *in pectore*, but his policy views, i.e. his allegedly being sceptic of the irreversibility of monetary union.

Secondly, Mattarella did not raise any concern regarding the rather controversial (and constitutionally problematic) migration and asylum policies enshrined in the “contratto di governo” (including the expulsion of 500,000 irregular immigrants and the dismantlement of Roma camps). He did not even feel the need to oppose the appointment to Minister of the Interior of Matteo Salvini, whose conduct in the recent past included gross sexist offences to the former President of the *Camera dei Deputati* Laura Boldrini. Serious doubts regarding the national constitutionality and European validity of the intended policies could be raised, but in this regard the President did not make proof of the same level of constitutional militancy when it came to different issues.

Thirdly, President Mattarella has clearly sensed that his decision to block Savona could raise eyebrows. This emerges at the end of his declaration where he qualifies the arguments previously expressed to justify his rejection: “The decision of joining the Euro is of key importance for the prospects of our Country and of our youth: if we want to discuss it, we have to do so openly and after a serious in-depth analysis. Also because it is an issue that was not brought up during our recent election campaign”. This passage clearly softens what otherwise would have been a harsh foreclosure of political debate. According to Mattarella, exit plans from the Eurozone can in principle be pursued, but only after open democratic deliberation which did not take place before the last general elections. But for the time being (presumably, within this legislative term) that policy option is not up for grabs and will meet his resistance.

EU law does not require Euro-loyalist ministers

Can Matterella's action be constructed as a correct interpretation of EU norms? Does EU law require Ministers of the Economy to refrain from criticizing the existing Eurozone arrangements or from voicing doubts regarding the continued membership of Eurozone states? First of all, let's state it clearly: European law does not impose any policy requirement for Minister of the Economy sitting in the ECOFIN and the Eurogroup. Only European Commissioners are expected to be committed Europeans (article 17(3) TEU), but apparently this did not prevent the like of Ralph Dahrendorf – a well known critic of the Eurocurrency – to take office in the past.

It is true that Member States of the Eurozone are under an obligation of loyalty towards each other and towards the European Union as a whole. But “federal loyalty” does not, and cannot, entail loyalty to present policies. Furthermore, it would be silly to construct loyalty as requiring putting a lid on potential reform processes. Otherwise, the number of Ministers of Finance who would have been forced to resign would be legion. Starting with the Ministers that were keen to raise the possibility of Greece being forced to exit the Eurozone if Greek governments did not accept certain conditions or implemented certain policies. Such statements may or may not have been politically wise, but certainly they were legally permissible.

It could still be said that being a Member State of the European Union, and especially of the Eurozone, requires not only putting in common the exercise of some powers, but also making a serious effort at constructing national norms, including constitutional norms, in such a way as to reduce the potential of conflict with supranational norms (in vertical terms), and with the constitutional laws of other states (in horizontal terms). But it would be deeply wrong to conclude that integration requires setting aside the fundamental values and principles enshrined in each national constitution, and perhaps even less so the principles at the core of the common democratic constitutional traditions of the Member States. So far, the *Movimento Cinque Stelle* and *Lega* have come to the conclusion that the policies needed to achieve to a great extent the goals prescribed by the Italian Constitution require policies that are impossible to apply under the present European economic “governance”. Savona has been reiterating this point for years. To put it in other terms, the new government is making a claim that in legal terms comes close to that made by Dieter Grimm when he has observed that European law, as interpreted by the European Court of Justice and, we would add, as practiced in the context of the European economic government, ties with the golden fetters of the euro the hands of national governments, rendering hopeless the task of removing the obstacles to the realization of substantive equality, as required by the Italian (and other) constitutions.

A renovated form of "*pactum ad excludendum*"

It seems to us that Mattarella's decision only starts to make sense if one adds a fundamental piece to the constitutional equation, namely a form of “convention” (functionally equivalent to a constitutional convention) according to which political parties or coalitions that are critical of the existing economic and monetary arrangements within the Eurozone cannot get into government. Or, more accurately, they are entitled to govern in a

tamed form (the other precedent in this regard is the taming of the Tsipras government, where also an unwelcome Minister of Finance ended up being ostracized). Another direct (but failed) precedent to initiate that convention can be found in the actions taken by the former President of Portugal to prevent the present ruling coalition in Portugal to come into power. Such a convention could be said to be a renovated form of “*pactum ad excludendum*”, only this time it would not be the communists, but those daring to be critical of European economic government arrangements that would have to be prevented from holding power.

There are three reasons why we find it extremely problematic to assume that such a convention is part and parcel of European law. Firstly, the convention has massive constitutional implications, amounting to a radical undermining of national and European constitutional law. Given that such convention not only lacks any form of democratic legitimacy, but amounts to a decisive limit to the existing procedures of democratic will-formation, we see every reason to contest its bindingness. Secondly, the convention is intended to foster the formation of governments that are either clearly minoritarian or that rely for their legitimacy on technocratic claims. Distant and recent precedents of such forms of lasting circumvention of responsive democratic government are far from encouraging. Thirdly, making national governments safe for the irreversibility of the euro might buy some time for the present economic and monetary union, but only at the price of further accelerating the accrual of conditions that favour the emergence of extremely radical policy proposals that would throw not only the dirty water of a deeply malfunctioning economic and monetary union, but also the baby of the Democratic and Social *Rechtsstaat*. In the present case, it is far from improbable that were new elections to be held, the result would be massive political, economic and social turbulence, out of which all kinds of political monsters could emerge. We should have by now learnt some lessons from European history.

The Eurozone crises are symptoms of deep underlying social, cultural and political malaises. A massive social fracture is emerging, out of which results not so much a conflict between the Europhiles and the Eurosceptics, but a new social question that opposes the happy and smart few to the increasingly restless and powerless many, as Alexander Somek has reminded us. The very same fire burning at the dark core of growing social inequality feeds the peculiar belief in a new form of authoritarian liberalism, in which the preservation of monetary and financial stability trumps democracy. But Member States, and Italy among them, are not a liberal republic founded on the preservation of the store value of money, but a democratic republic founded on labour that should aim at removing the obstacles not to free movement of capital, but to the actual equality of its citizens. Had Mattarella clinged fast to such values, not only Italy would have by now a government, but perhaps he would have contributed to rekindle the languishing hopes that the Eurozone can still be reformed, and saved from a collapse that those who proclaim to be their advocates are objectively favouring with their actions. The Eurozone does not need yet another constitutional convention tightening the straitjacket it has become, but on the contrary, the recreation of political space by deconstitutionalising a good number of the rigid norms at its core, as Dieter Grimm has proposed.

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